

Compliance Guide for the Concentrated Aquatic Animal Production Point Source Category

Chapter 4: What Do I Need to Know About NPDES Permits?

Full document available at
<http://www.epa.gov/waterscience/guide/aquaculture>

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How do I apply for an NPDES permit?

To apply for a permit, you first need to acquire the application forms. You can get the forms you need to apply for an NPDES permit from your permitting authority. Some states have made the forms available on their websites. Check with your permitting authority to make sure you are using the correct forms.

An applicant should consider requesting a pre-application meeting to resolve any questions and to seek guidance from the agency and or permit writer. It may be advantageous for the applicant, permit writer, and aquaculture extension specialist to hold joint discussion to develop BMP components appropriate for the specific facility, species, production system, and location under consideration.

You next need to determine what type of permit you will be applying for. Under the federal NPDES regulations, there are two types of permits—general permits and individual permits. Each permitting authority adopts its own rules about what types of permits operations need, so you should contact your permitting authority for more information.

After you determine what type of NPDES permit to apply for, you need to complete the application forms and submit the required information. Refer to page 4-3 for a discussion of the information you must include in your permit application.

Depending on your specific facility (existing, new, etc.), you must apply for a renewal of your current permit or a new permit by the required deadlines. Refer to

page 4-3 for more information about deadlines for applying for NPDES permits.

After you acquire an NPDES permit, you must have the permit in effect for your operation as long as it is an operating CAAP. Refer to page 4-6 for a discussion of situations where you can discontinue your NPDES coverage. Page 4-7 contains information about what to do if significant changes occur at your operation.

What is an NPDES general permit?

An NPDES general permit has one set of requirements for a group of similar types of facilities. For example, all CAAP facilities in a particular area, such as an entire state or a watershed within the state, might be covered under one general permit. The permitting authority sets the permit conditions, issues a draft permit, and requests comments from the public. The permitting authority may make changes to the draft permit based on the public comments and then issues the final permit.

The general permit specifies what kinds of operations can be covered. Owners and operators of eligible operations may then apply for coverage under the general permit. Contact your permitting authority to see if your facility is eligible to be covered under an existing general permit.

Operators of CAAP facilities that are eligible for coverage under a general permit may notify the permitting authority that they want to be covered by submitting a Notice of Intent (NOI). If an NPDES general permit is available in your state and your operation

meets the eligibility requirements, you must fill out an NOI and submit it to your permitting authority to apply for coverage under the general permit. The general permit will tell you how to apply for coverage, the deadline for applying, and when your coverage will become effective.

Some general permits specify that coverage is automatic unless notified by the permitting authority. Coverage under other general permits does not begin until receipt of notification of applicability by the permitting authority. If coverage is automatic, EPA recommends that the general permit specify that the facility is authorized to discharge in accordance with the permit after a specified waiting period of, for example, 30 days. Having a specified waiting period or coverage only upon receipt of a notification of applicability will allow the permitting authority the opportunity to provide for meaningful public involvement after NOIs are submitted.

States that have developed general aquaculture NPDES permits include the following:

- *EPA Region 10 – General NPDES Permit for Aquaculture Facilities in Idaho and Associated, On-site Fish Processors (ID-G13-0000)*
- *Maine – General Permit for Atlantic Salmon Aquaculture (MEG130000)*
- *North Carolina – General Permit No. NCG530000*
- *Washington – Upland Fin-Fish Hatching and Rearing General NPDES Permit*

What is an NPDES individual permit?

An NPDES individual permit contains requirements designed specifically for one CAAP facility. You must apply for an

NPDES individual permit if any of the following are true:

- A general NPDES permit is not available.
- Your CAAP facility is not eligible to be covered under the general NPDES permit.
- You want an individual NPDES permit.
- Your permitting authority requires you to apply for an individual permit.

The permitting authority may also require any discharger currently covered by a general permit to apply for and obtain an individual NPDES permit.

To apply for an individual permit, you must fill out either NPDES Forms 1 and 2B (available in Appendix K) or similar forms required by your state. You should contact your permitting authority for the proper forms. Forms 1 and 2B may be downloaded from EPA's website at:

http://cfpub2.epa.gov/npdes/doctype.cfm?sort=name&program_id=45&document_type_id=8. Your state permitting authority may also provide the necessary application forms on their websites. Check with your permitting authority to be sure you submit the correct forms.

You must complete the forms and submit them to your permitting authority. When your permitting authority receives your permit application, it will use the information you submitted to draft a permit for your operation. Your permitting authority will base your permit requirements on the unique conditions at your operation. A collaborative effort between the farmer, permit writer, and an aquaculture extension specialist may be helpful. After a public comment period on the draft permit, your

permitting authority will modify the draft, if necessary, and then issue your final NPDES individual permit.

What information do I have to include in my NOI or permit application?

When you apply for an individual NPDES permit, you must give the following information to your permitting authority, as part of Form 2B (much of the same information may be required as part of an NOI for coverage under a general permit):

- Contact information for the owner or operator of the facility.
- If the facility is existing or proposed.
- The location and mailing address of your facility.
- The latitude and longitude of the entrance to your facility's production area.
- A topographic map of the area where your facility is located, with the location of the production area specifically marked.
- The outfall number and flow for each outfall from the facility.
- The total number and size of ponds, raceways, tanks, other rearing units, and similar structures at your facility.
- The name of the receiving water.
- The source of water used in your facility.
- The species (cold water and warm water) of fish or aquatic animals held at your facility. For each species, you will need to provide the total weight produced by your facility per year in pounds of harvestable weight

Check EPA's website at: <http://cfpub.epa.gov/npdes/stormwater/latlong.cfm> to find out how to determine the latitude and longitude and where to get a topographic map for your location.

(harvestable weight = gross production), as well as the maximum weight present at any one time.

- The total pounds of food fed during the calendar month of maximum feeding.
- The treatment systems and practices you use for wastewater.

Your permitting authority may require more information than what is listed above when you apply for a permit. Check with your permitting authority to make sure you are submitting the correct information.

 Regulations: 40 CFR 122.21 and 122.28

When do I have to get an NPDES permit?

Your permit application deadline depends on whether your operation is an existing CAAP facility, a new discharger, or a new source. Each category has a different deadline for applying for an NPDES permit. Read the descriptions below to determine when you must apply for an NPDES permit.

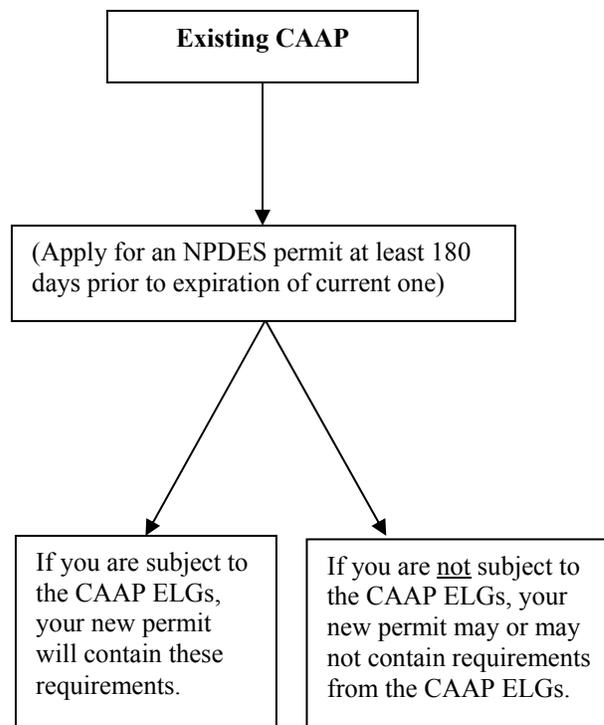
- If you are an **existing CAAP facility** (already have an NPDES permit), you must apply to renew your NPDES permit at least 180 days before it expires. Refer to the section "Existing CAAP Facilities" below for additional information.
- If you are a **new discharger**, you must apply for an NPDES permit at least 180 days before you plan to begin discharging from the CAAP facility. Refer to the section "New Dischargers" below for additional information.
- If you are a **new source**, you must apply for an NPDES permit at least 180 days before you plan to begin discharging from the CAAP facility.

Refer to the section “New Sources” below for additional information.

You are responsible for applying for NPDES permit coverage for your facility. The federal regulations do not require your permitting authority to notify you that you must apply. For an individual permit, the permitting authority issues a permit after it receives a complete and accurate permit application from the facility seeking coverage. For a general permit, the permitting authority issues the general permit, and operators then submit their NOIs to be covered under the permit. In both instances, the permitting authority is required to provide public notification that a permit has been drafted. In addition, although permitting authorities are not required to do so, many are likely to conduct outreach to communicate who must obtain a permit and how to do so. Ultimately, however, the responsibility to seek permit coverage lies with the aquaculture facility. Your failure to meet the permitting deadlines described below could result in liability under the Clean Water Act, which may result in penalties.

Existing CAAP Facilities

Existing CAAP facilities are operations that are already permitted under 40 CFR 122.24. If you operate a CAAP facility that is already permitted, you already have an NPDES permit. You will have to reapply for a new permit at least 180 days before your existing permit expires. When the permitting authority renews your permit, your permit will include the ELGs requirements *if* you meet the production and system type applicability requirements of the ELGs. If you *do not* meet the production and system type applicability requirements of the ELGs, recall that other NPDES requirements may apply to your facility.



New Dischargers

New dischargers are operations that are defined as CAAPs after the effective date of the rule (September 22, 2004), but are not new sources. A general definition of new discharger is found at 40 CFR 122.2.

One example of a new discharger is a facility that is newly constructed, will meet the production threshold for a CAAP (thus requiring an NPDES permit), but will not meet the thresholds at which ELGs, and therefore New Source Performance Standards, would apply. As a new discharger, you must apply for a permit at least 180 before you plan to commence discharging unless permission for a later date is granted by the permitting authority.

It also is possible for a facility already constructed and discharging to be considered a new discharger under the NPDES program. For example, if your facility previously was not defined as a

CAAP but plans to increase the number of aquatic animals produced so you exceed the production threshold for definition as a CAAP facility, you would then be considered a new discharger for purposes of NPDES permitting. In this case, unless a later date is granted by the permitting authority, you must apply for an NPDES permit at least 180 days before you increase production and, therefore begin discharging as a point source subject to NPDES requirements.

New Sources

A CAAP facility is a new source if construction of the facility began after September 22, 2004 and the CAAP ELGs apply to the facility. Under the CWA, construction refers to the construction of any building, structure, or facility and to the installation of equipment. Construction commences if an entity either undertakes or begins certain work as part of a continuous on-site construction program, or enters into contractual obligations to purchase facilities or equipment. If construction occurs after the new source date, the facility will be considered a new source if it meets any of the following criteria:

- It is constructed at a site at which no other source is located; or
- It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- Its processes are substantially independent of an existing source at the same site. To determine whether the processes are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same

general type of activity as the existing source should be considered. 40 CFR 122.29(b)(1), 40 CFR 403.3(k)(1).

Construction at land-based sites such as flow through and recirculating systems occurs when ground is broken, new equipment is delivered, or other significant changes occur. For net pen and cage operations, construction at the facility is generally considered the start of the timeframe for a new source. Construction is considered to include when some activity associated with site preparation or construction of the pens in the water occurs. For example:

- Some activity takes place at the site bottom or surface in preparation for placement of a net pen or cage.
- If no site bottom or surface preparation is necessary, net pens or cages are placed in the water.

The date construction at the facility begins compared to the effective date of the rule is important. A new source determination for aquatic animal production facilities for water-based systems such as net pens will be based on the date at which construction commences. Based on individual circumstances, the date construction begins may be the date the nets, cages, or structure, are placed in the water, date the nets/cages were purchased, or the date a binding contractual agreement takes place.

New sources will need to comply with the NSPS and limitations of the CAAP rule at the time such sources commence discharging CAAP process wastewater.

If you own or operate a new source CAAP facility, you must apply for a permit at least 180 days before you plan to begin discharging from the CAAP facility. New

source permitting is subject to National Environmental Policy (NEPA) review.

When will my NPDES permit expire?

Individual NPDES permits are usually issued for 5-year terms and are reissued every 5 years. You should check the expiration date of your permit.

General NPDES permits are also usually issued for 5-year terms. Because a general NPDES permit is created for multiple permittees, however, it could have been issued several years before you submitted your NOI. If this is the case, the general NPDES permit might expire less than 5 years after you submit your NOI.

To reapply for a permit when it is due to expire, you must submit a complete and accurate new application form (for an individual permit) or new NOI (to be covered under a general permit) 180 days before your permit's expiration date. For *EPA issued permits*, if you have met this deadline and your permitting authority fails to reissue your NPDES permit before the expiration date, the conditions of your current NPDES permit will remain in effect until the permitting authority acts on your complete and accurate new application (40 CFR 122.6). Although many states have automatic continuation, *state issued permits* are subject to state law.

Some permitting authorities might have other deadlines or procedures for reissuing CAAP NPDES permits. For example, some general permits are automatically continued without a facility submitting a new NOI. Check the reapplication procedures specified

in your permit, and contact your permitting authority to find out exactly what you must do to get a new permit when your current permit is due to expire.

How long should I keep my NPDES permit?

You must have an NPDES permit in effect for your operation as long as it is an operating CAAP. There are a few situations in which you can discontinue your NPDES coverage:

- You close your operation.
- You ***permanently change*** your operation so that it no longer is a CAAP (under the NPDES program).

Under all circumstances, you must have an NPDES permit in effect until you properly dispose of process wastewater that was generated at the CAAP facility and solids collected in a settling basin or held in a storage tank so that your operation no longer has a potential to discharge to waters of the United States. If your operation still has a potential to discharge when your permit is due to expire, you must reapply for a permit. Once you have properly disposed of the collected solids, and process wastewater so that there is no longer a potential to discharge, you may ask your permitting authority to terminate your permit. Contact your permitting authority to find out more about how to terminate your permit. (You can find contact information for your permitting authority in Appendix A of this guide.)

If you make short-term (1-2 years) changes to your operation that reduce annual production so you no longer meet the definition of a CAAP facility, you may request changes be made to your permit. However, remember that the permitting authority can reevaluate your operation and add requirements at that time. Contact your permitting authority if you have any questions.

What if I make significant changes to my operation while I have an NPDES permit?

If you make significant changes at your operation, under NPDES regulations and the terms of your permit, you must contact your permitting authority and report these changes. Examples of significant changes include increasing production levels (e.g., increasing annual production from 50,000 pounds to 175,000 pounds), changes to structures (e.g., removing quiescent zones), or changes to facility configuration (e.g., adding 10 raceways to a facility).